

OCT 8 1983

ALEXANDER L. STEVAS,
CLERK

No. 83-241

In The

Supreme Court of the United States

October Term, 1983

OLSON MOTOR COMPANY, a MINNE-
SOTA CORPORATION AND RAY A. OLSON,
Petitioners,

vs.

GENERAL MOTORS CORPORATION, a
DELAWARE CORPORATION and GENERAL
MOTORS ACCEPTANCE CORPORATION,
a NEW YORK CORPORATION,
Respondents,

REPLY OF PETITIONER OLSON MOTORS COMPANY
ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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PETITIONER'S REPLY

I

Olson Motors rebuts GMAC's argument about Olson Motors' insolvency and mismanagement being the reason it terminated Olson. The evidence proved the real cause to be Olson's enemies in GM.

In 1961, when GM awarded Ray Olson the Pontiac dealership to operate alongside Andy Olson's existing Cadillac and Oldsmobile dealerships, the local Buick dealer became bitter. The Buick dealer's son-in-law was a GM executive who exerted influence in his behalf. This led to a long dispute that involved GM personnel as well as the two dealers. This dispute produced volumes of correspondence and, all the while, Olson and the Buick dealer engaged in fierce competition by selling GM's automobiles at cut prices.

The matter came to a head in 1967 when GM gave an ultimatum to Ray Olson to give up the Pontiac dealership to the Buick dealer or build a brand new GM dealership facility on the outskirts of Albert Lea. Ray Olson acquiesced to build.

As stated in the Petition, Olson did not have the finances to build and GM advised and assisted him on the financial planning. By June, 1969, GM sent GMAC to finance Olson's car inventory and GMAC extended Olson inventory credit for \$234,982.00 without making any credit investigation.

Four months later, when GM studies Olson Motors' progress, it not only found that Olson needed \$72,000.00 more capital, but also found that Olson had the reasonable probability of earning a

\$157,128.00 net profit in 1970.

Thus, GM's written study showed Olson Motors to be a plum ripe for picking.

Eight days later, the GMAC official in charge of Olson's account, Mr. Mundy, for the first time in his life came to Olson's dealership and told Olson, in effect, that GMAC deemed itself insecure and for Olson to immediately invest \$71,500.00 cash or else GMAC would publicly seize his inventory. Privately, he told Olson he had no choice. Two days before, GMAC made all the necessary arrangements for the swift seizure.

At the time of GMAC's repossession, Olson Motors was not out of trust on a single vehicle. The Olsons had never written a check for insufficient funds. And concerning GMAC's allegations of mismanagement, GMAC never made an investigation of Olson's management at any time. According to GM's own records, the Olson family had been outstanding GM dealers since 1945.

Contrary to GMAC's argument, Olson Motors' only concession was that if GMAC's financing contract was not controlled by the Dealer's Act, then it had the legal right to deem itself insecure and to repossess Olson's inventory. However, Olson Motors always contended that GMAC's financing contract was subject to the Dealer's Act, and that GMAC violated the good faith requirement of the Act by coercively requiring Olson to invest additional capital without giving him

a reasonable chance to respond to its demand.¹

Olson Motors always contended that it is inconceivable that a wholly owned subsidiary, such as GMAC, would or could independently act to close down a GM dealer except in accordance with GM's interest and desires. Olson contends that Congress knew the major role of subsidiaries in the automobile industry since it expressly targeted them in the definition, Section 15 USC 1221(a).

This is an appropriate case for review because GMAC unquestionably used its financing contract to coercively terminate Olson Motors dealership and the Court of Appeals held that GMAC, if it acted independently, could coercively terminate a dealer and not be liable under the Act. This holding is clearly expressed by the following language from the Court of Appeal's opinion: "In Anderson, the bank and the finance company were independently liable to the debtor under the UCC. The Debtor had separate causes of action against each wrongdoer. . . . GMAC cannot be held independently liable under the Dealer's Act." (Opinion reprinted in Petition for Writ of Certiorari, at page Appendix A-8)

It is simplistic for GMAC to say that because Olson proved common agency, it is inappropriate for review. Requiring the wronged dealer to prove common law agency is just one roadblock flowing from the Court's

¹ Evidence showed that Olson easily could have raised this money if given a reasonable time. For example, a physician, formerly of the Mayo Clinic, testified he would have loaned \$100,000.00 to Olson.

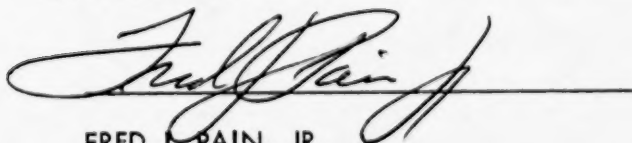
holding. A second roadblock is that the modern federal law of release is inapplicable to GMAC's non-independent liability situation. (Opinion reprinted in Petition for Writ of Certiorari, page Appendix B-6)

The question if Congress meant to target wholly owned subsidiaries remains an important issue that can only be finally resolved by this Court.

II

The argument of GMAC that Olson received substantial consideration implies that Olson has been compensated. The evidence is contrary. GM's only consideration for the three release letters was to consent to the salvage sale of Olson's assets for the benefit of just two creditors. GM records showed that this sale was at a price far below actual value. The various other creditors who loaned money to build the dealership still are unpaid. From the salvage sale, the two creditors gave Ray Olson \$5,000.00, about enough money to cover his expenses of moving himself and his family to Phoenix, Arizona to begin a new life.

RESPECTFULLY SUBMITTED this 30th day of
September, 1983.

A handwritten signature in cursive script, appearing to read "Fred J. Pain, Jr.", is written over a horizontal line.

FRED J. PAIN, JR.
Attorney for Plaintiffs-Appellants